

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES of AMERICA,

Case 1:18-cr-10468-13 NMG

v.

EDWARD CHAPMAN,
Defendant.

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
MOTION FOR TEMPORARY RELEASE FROM CUSTODY

Defendant, Edward Chapman, by his counsel, Kevin L. Barron, Esq., respectfully offers this supplemental memorandum to inform of new developments in the novel corona virus epidemic relating to incarceration.

POINT I (SUPPLEMENT):
AVOID OVERWHELMING HOSPITALS

Defendant's reference in his April 6, 2020 Emergency Motion to the study concerning the outbreak aboard the M/V DIAMOND PRINCESS and its prediction of a 79% rate of infection (Doc. 384, pp. 5-6) has proven, sadly, to be an accurate model for the prison setting. The ca. 75% rate of infection in a corona virus outbreak on a cruise ship, on an aircraft carrier, in a factory or in a prison are the same:

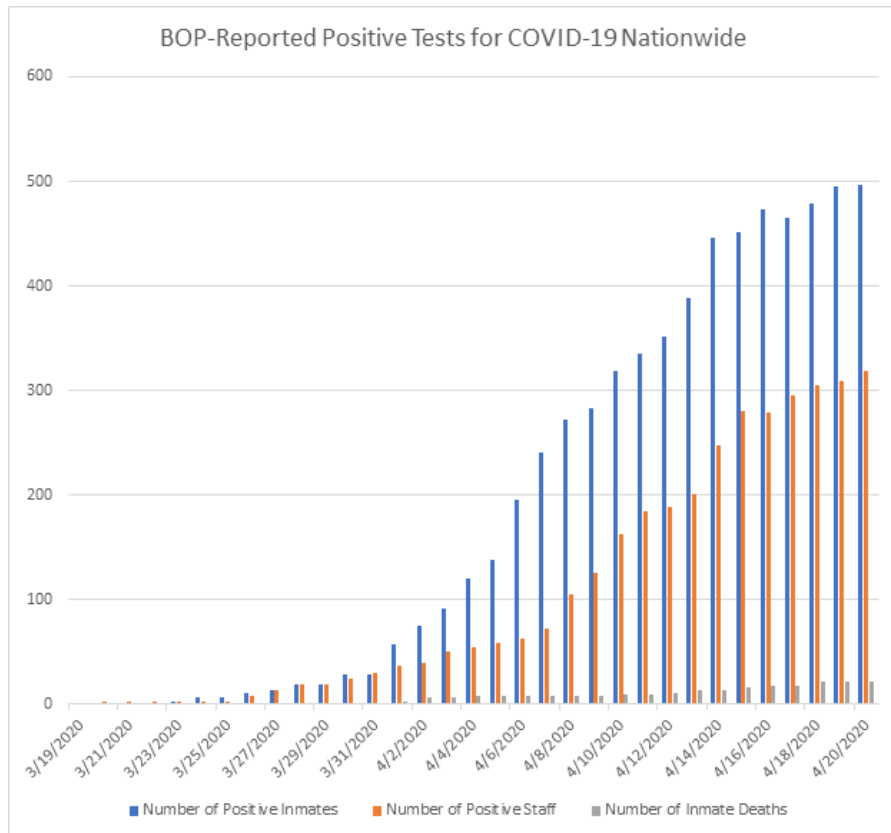
A state prison in Ohio is now the largest reported source of virus infections in the United States, according to [a New York Times database](#), continuing a trend of [fast-moving outbreaks behind bars](#). Ohio officials said Sunday that at least 1,828 inmates – almost three-quarters of the prison population – had tested positive at the Marion Correctional

Institution,.... That's more than the number of known cases at a [meatpacking plant in South Dakota](#) and an [aircraft carrier docked in Guam](#).

* * * *

Despite warnings from health officials and attempts to release some inmates to avoid outbreaks, jails, prisons and detention centers have emerged as major coronavirus spreaders. As of Monday, four of the 10 largest-known sources of infection in the United States were correctional facilities, according to Times tracking data. [emphasis added]

New York Times, "Live" April 21, 2020.¹ Corona virus continues to spread inside the US Bureau of Prisons:



¹ <https://www.nytimes.com/2020/04/20/us/coronavirus-live-news.html#link-52cdb996>

² Source, Federal Defenders of New York.

While no cases have been *reported* yet among inmates at defendant's place of detention, Norfolk County Jail, an outbreak of the infection is only a matter of time. Mr. Chapman reports today that new inmates are being quarantined for seven days or less and that the quarantine unit is overcrowded. Another of counsel's clients now moved to Wyatt (with no knowledge of Mr. Chapman) reported the same circumstances at Dedham in a call this afternoon.

The D.W. Wyatt Detention Facility reported one positive case to USMS yesterday. A total of three tests were administered. See report on District Website.³ The jail is on lockdown.

POINT II (SUPPLEMENT):
INDIVIDUAL CHARACTERISTICS

Defendant is 53, suffers from hypertension and a seizure disorder. See sealed Ex. A. According to statistics compiled by the New York State Department of Health, hypertension is the leading comorbidity, present in more than half of all corona virus deaths.⁴ Out of a total of 15,302 deaths from corona virus in New York, 13,623 died with comorbid conditions, 8,774 of those with hypertension, followed by 5,714 with diabetes.

³ <https://www.rid.uscourts.gov/sites/rid/files/wyattreport2.pdf>

⁴ NYS Dept. Public Health website updated daily:
<https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no>

As his Norfolk County records show, Mr. Chapman is currently treated for hypertension and a seizure disorder. Given his age and condition, keeping him in detention puts his health at an unreasonable risk.

POINT III (SUPPLEMENT):
EXTRAORDINARY CIRCUMSTANCES

The Districts in this Circuit have granted numerous post-conviction bail motions connected with the corona virus epidemic over government objection and with government assent. See, *United States v. Pridgen*, Case 1:19-cr-10375-RGS, Doc. 54 (D. Mass. April 20, 2020) (temporarily releasing defendant with hypertension from Plymouth County Correctional Facility for sixty days, over government objection); *United States v. Trinidad-Acosta*, Case 1:11-cr-00205-JAW, Doc. 1009 (D. Me. March 31, 2020) (granting motion to delay self-surrender date by 56 days, with assent from government so long as delay was no more than 60 days); *United States v. French*, Case 1:12-cr-00160-JAW, Doc. 869 (D. Me. March 31, 2020) (granting motion for bail pending appeal over government's objection); *United States v. Zukowski*, Case 4:18-cr-40001-TSH, Doc. 112 (D. Mass. March 27, 2020) (with assent from government and probation, releasing defendant back on supervised release with added conditions,); *United States v. Calhoun*, Case 1:10-cr-10082-DPW, Doc. 151 (D. Mass. March 31, 2020) (with assent from government and probation,

granting release pending SR revocation hearing); *United States v. Sanderson*, Case 1:14-cr-10168-FDS, Doc. 215 (D. Mass. April 6, 2020) (with assent from government and probation, granting compassionate release); *United States v. Monroe*, Case 1:20-cr-00011-JJM-LDA-1, Doc. 25 (D.R.I. April 6, 2020) (granting release pending sentencing over government objection); *United States v. Capelton*, Case 3:00-cr-30027-MGM, Doc. 539 (D. Mass. April 10, 2020) (granting compassionate release to defendant housed at MDC Brooklyn with less than thirty days remaining in his sentence, over objection by the government); *United States v. Ivery*, Case 1:02-cr-10402-WGY, Doc. 59 (D. Mass. April 14, 2020) (releasing defendant over government objection pending final hearing on supervised release violation, with caveat that "when the pandemic ends, Defendant is to return to custody"); *United States v. Lamothe*, Case 1:15-cr-10147-MLW (D. Mass. April 15, 2020) (with government's assent, releasing defendant with no underlying health issues back on supervised release conditions).

Dated: April 20, 2020

Respectfully submitted,
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By his counsel,
/s/ Kevin L. Barron
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CERTIFICATE OF SERVICE

Counsel certifies that he has caused a true copy of this document to be served today on the attorneys for all the parties

through the CM/ECF system of this District as set forth in the Notice of Electronic Filing and that no party requires service by other means.

/s/Kevin L. Barron